

1 THE HONORABLE JAMES L. ROBART
2
3
4
5
6
7
8

9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
11 AT SEATTLE

12 ELAINE DOUGAN,
13 for Herself, as a Private Attorney
14 General, and/or On Behalf Of All
15 Others Similarly Situated,

16 Plaintiff,

17 v.

18 THE CHILDREN'S PLACE, INC.,

19 Defendant.

20 Case No. 2:20-cv-00818-JLR

21 **PLAINTIFF'S OPPOSITION TO
22 DEFENDANT'S MOTION FOR
23 RELIEF FROM DEADLINES IN
24 COURT'S SCHEDULING ORDERS**

25 **NOTE ON MOTION CALENDAR:
26 Friday, August 28, 2020**

1 Plaintiff Elaine Dougan opposes Defendant The Children's Place, Inc.'s ("TCP")
 2 Motion for Relief from Deadlines in Court's Scheduling Orders ("Motion") (Dkt. 23) for
 3 several reasons.

4 **First**, while TCP argues that engaging in initial disclosures and a Rule 26(f) conference
 5 and report would cause "irreparable harm," the JAMS arbitration rules which apply (according
 6 to TCP) require a largely identical exchange of information.

7 TCP's arbitration agreement states that arbitration is to be administered by JAMS
 8 "pursuant to the JAMS Streamlined Arbitration Rules & Procedures." *See Motion to Compel*
 9 *Arbitration*, at 4 (Dkt. 11). Rule 13 of JAMS Streamlined Arbitration Rules & Procedures,
 10 entitled Exchange of Information, provides:¹

11 (a) The Parties shall cooperate in good faith in the voluntary and informal
 12 exchange of all non-privileged documents and information (including
 13 electronically stored information ("ESI")) relevant to the dispute or claim,
 14 including copies of all documents in their possession or control on which they
 15 rely in support of their positions or that they intend to introduce as exhibits at the
 16 Arbitration Hearing, the names of all individuals with knowledge about the
 17 dispute or claim and the names of all experts who may be called upon to testify
 18 or whose reports may be introduced at the Arbitration Hearing. The Parties and
 19 the Arbitrator will make every effort to conclude the document and information
 20 exchange process within fourteen (14) calendar days after all pleadings or notices
 21 of claims have been received. The necessity of additional information exchange
 22 shall be determined by the Arbitrator based upon the reasonable need for the
 23 requested information, the availability of other discovery options and the
 24 burdensomeness of the request on the opposing Parties and the witness.

25 JAMS Rule 13 overlaps the initial disclosure requirements of Fed.R.Civ.P.
 26(a)(1)(A)(i), (ii) by requiring TCP to provide Ms. Dougan with "all documents . . . on which
 27 they rely in support of their positions or that they intend to introduce as exhibits at the
 28 Arbitration Hearing, [and] the names of all individuals with knowledge about the dispute or
 claim." JAMS Rule 13 specifically refers to ESI, one the main concerns of the Rule 26(f)
 conference. The disclosure requirements of JAMS Rule 13 are arguably more burdensome than
 those of the federal rules since, for example, JAMS front-loads expert discovery in a way that
 the federal rules do not and JAMS compresses its broad disclosures into a 14-day period that

27 ¹ JAMS Streamlined Arbitration Rules & Procedures can be found at:
 28 <https://www.jamsadr.com/rules-streamlined-arbitration/>

1 follows the close of the pleadings. TCP cannot credibly argue that it will be irreparably harmed
 2 by engaging in discovery-related activity in this Court which it would also be required to do in
 3 the arbitration. If anything, TCP would “conserve resources” (its other argument) by following
 4 the federal rules’ more leisurely disclosures. Also, TCP cannot truly “conserve resources” or be
 5 prejudiced when it must provide largely identical disclosures in either forum.

6 **Second**, the Rule 26(f) conference of counsel is a useful exercise for identifying the
 7 issues and potential flash points of a dispute—regardless whether that dispute will ultimately be
 8 resolved by litigation or arbitration. Local Civil Rule 26(f) requires that the parties at the
 9 conference discuss certain topics which are applicable to both litigation and arbitration, e.g., the
 10 possibility of settlement, early resolution of potentially dispositive issues, ESI, evidence
 11 preservation obligations, and inadvertent production of privileged materials. The discovery plan
 12 required by Rule 26(f) can be applied in the arbitration or can be used as the basis for
 13 negotiating or requesting an amended discovery plan in the arbitration. Again, TCP cannot be
 14 prejudiced by engaging before this Court in the same actions that it would engage in arbitration.

15 **Third**, while TCP claims that, “when presented with a motion to compel arbitration, a
 16 court’s jurisdiction is limited to determining whether the dispute is arbitrable,” neither of the
 17 legal authorities cited by TCP stands for such a sweeping proposition. The cited case of *Simula,*
 18 *Inc. v. Autoliv, Inc.*, 175 F.3d 716, 726 (9th Cir. 1999), says nothing about jurisdiction *qua*
 19 arbitration, and the cited case of *Coneff v. AT&T Corp.*, 2007 WL 738612 (W.D. Wash. March
 20 9, 2007), is likewise silent. Since “even an ***order*** compelling arbitration does not under the
 21 FAA divest the court, state or federal, of jurisdiction,” *Cure v. Toyota Motor Corp.*, 248 F.
 22 Supp. 2d 594, 597 (S.D. Miss. 2003) (emphasis added), it stands to reason that a mere motion
 23 to compel arbitration cannot impact the Court’s jurisdiction.

24 **Fourth**, as of the time of the filing of this Opposition, TCP’s counsel are refusing to
 25 schedule a Rule 26(f) conference despite repeated requests by Plaintiff’s counsel to hold the
 26 conference on or before the Court-ordered deadline of August 28, 2020. TCP’s counsel
 27 suggested that the conference be held on September 9th, but TCP’s proposal (1) violates the
 28 Court’s order setting the conference deadline at August 28, 2020 (Dkt. 21), and (2) improperly

1 assumes that the Court will grant TCP's motion, even though LCR 7(j) states that "Parties
 2 should not assume that the motion [for Relief from a Deadline] will be granted and must
 3 comply with the existing deadline unless the court orders otherwise." Plaintiff's counsel is
 4 attempting to follow both the Court's orders and Local Rule requiring the parties to comply
 5 with existing deadlines unless and until ordered otherwise.²

6 In the alternative, if the Court grants TCP's Motion, then Ms. Dougan requests that the
 7 timing of each deadline in the Courts' two Scheduling Orders (Dkts. 21, 22) be the same and
 8 begin running from the date the Court denies TCP's Motion to Compel Arbitration (Dkt. 11). In
 9 particular, Ms. Dougan aspires to adhere to this Court's 180-day deadline to move for class
 10 certification (Civil Local Rule 23(i)(3)) but she requests that she enjoy the full allotment of
 11 time under that rule. If the Court grants TCP's motion, Ms. Dougan requests the following
 12 timeline beginning from the date the Court denies TCP's Motion to Compel Arbitration (with
 13 the class certification deadline taking into account the 76 days which had elapsed between the
 14 filing of the complaint and the date of the Court's two scheduling orders (Dkt., 21, 22)):

Event	Deadline From Denial of Motion to Compel Arbitration
FRCP 26(f) Conference	14 Days
FRCP 26(a)(1) Initial Disclosures	28 Days
FRCP 26(f)/LCR 26(f) Joint Status Report	35 Days
Complete Class Certification Discovery	73 Days
Plaintiff to File Motion for Class Certification	104 Days

22 DATED this 26th day of August, 2020.

23 HATTIS & LUKACS

24 By: /s/ Che Corrington

25 Che Corrington, WSBA No. 54241
 che@hattislaw.com

26 ² In an attempt to comply with the Court's deadline, Plaintiff's counsel are available for a
 27 telephonic Rule 26(f) conference at any time on Thursday after 11 a.m. PT and (despite a
 28 significant calendar conflict) can now make themselves available at any time on Friday except
 between 2 p.m. and 4 p.m. PT.

1 Daniel M. Hattis, WSBA No. 50428
2 dan@hattislaw.com
3 Paul Karl Lukacs, WSBA No. 56093
4 pkl@hattislaw.com
5 HATTIS & LUKACS
6 400 108th Avenue NE, Suite 500
Bellevue, WA 98004
Tel: 425.233.8650
Fax: 425.412.7171

7 Attorneys for Plaintiff Elaine Dougan and the Proposed Class
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington and the United States, that on the 26th day of August, 2020, the document attached hereto was filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel on record in the matter.

DATED this 26th day of August, 2020.

/s/ Che Corrington
Che Corrington, WSBA No. 54241